INDEX

	Page
Indictment	1A
Request for a bill of particulars	2A
Bill of particulars	4A
Motion to dismiss indictment	5A
Opinion	7A
Verdict	18A
Judgment	19A
Docket entries	20A
Notice of Appeal	20A
Witnesses:	
Ernie Adamson	
Direct examination	32A
Cross examination	48A
Court's charge to the jury	56A
Motion for a new trial	65A
Proceedings in U. S. C. A., District of Columbia Circuit	70
Minute entry of argument and submission	70
Opinion per curiam	71
Dissenting opinion, Prettyman, J	71
Judgment	72
Designation of record	73
Clerk's certificate	73
Stipulation as to printed record, etc	74
Order allowing certiorari	76

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9851

HELEN R. BRYAN, *Appellant,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the District Court of the United States for the District of Columbia

JOINT APPENDIX

* * * *

104 Filed in Open Court March 31 1947

Charles E. Stewart, Clerk

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA
Holding a Criminal Term
January Term, 1947
UNITED STATES OF AMERICA v. HELEN R. BRYAN
Criminal No. 365-47
Grand Jury Original
Violation 192, Title 2 U. S. C.
(Contempt of House of Representatives)

The Grand Jury charges:

Pursuant to House Resolution 5 of the House of Representatives of the United States, 79th Congress, dated January 3, 1945, including the rules of Congress therein adopted and amended, the House of Representatives was empowered to and did create the Committee on Un-Ameri-

can Activities, having duties and powers as set forth in said Resolution.

Helen R. Bryan was summoned as a witness by authority of the House of Representatives, through its Committee on Un-American Activities, to produce before the said Committee, records upon the matter under inquiry committed to the said Committee by the Resolution aforesaid, that is to say, all books, ledgers, records and papers relating to the receipt and disbursement of money by or on account of the Joint Anti-Fascist Refugee Committee or any subsidiary or subcommittee thereof, together with all correspondence and memoranda of communications by any means whatsoever with persons in foreign countries for the period from January 1, 1945, to March 29, 1946. She appeared before said Committee at its session in the District of Columbia on April 4, 1946, but then and there refused to produce the said records upon the matter under inquiry, and thereby wilfully made default.

George Morris Fay
Attorney of the United States in
and for the District of Columbia.

A True Bill:
Helen M. Hoffman
Foreman

• • • •

105 Filed Apr 21 1947 Charles E. Stewart, Clerk

SIR:

PLEASE TAKE NOTICE that upon the affidavit of O. John Rogge, Esquire, duly verified the 19th day of April, 1947, upon the indictment found against the defendant and upon all the proceedings heretofore had herein, a motion will be made at a term of this Court held at the United States District Courthouse in Washington, D. C., on the 25th day of April, 1947, at the opening of Court on that day, or as soon thereafter as counsel can be heard

for an order directing the United States District Attorney to serve and file a Bill of Particulars of the above-described indictment setting forth the following:

1. Of what acts or actions did the alleged wilful default of the defendant consist as charged in the Indictment.

II. What is or constitutes the alleged matter under inquiry committed to the said Committee by the resolution set forth in said indictment.

III. How did the records referred to in the Indictment bear upon the matter under inquiry referred to in said indictment.

106 And for such other and further relief as to the Court may seem just and proper.

Dated: April 19, 1947.

Yours, etc.
O. John Rogge
O. John Rogge
160 Broadway
New York 7, N. Y.
WO 2-1437
Wolf, Popper, Ross & Wolf
By Benedict Wolf
160 Broadway
New York 7, N. Y.
WO 2-1437
Attorneys for Petitioner

To: Hon. George Morris Fay
United States District Attorney
District of Columbia

• • • •

107 Filed Apr 21 1947 Charles E. Stewart, Clerk

STATE OF NEW YORK SS:
COUNTY OF NEW YORK

O. John Rogge, being duly sworn deposes and says:

1. That he is one of the attorneys for the defendant named in the above bill of indictment.

2. That your deponent makes this affidavit since he has consulted and conferred with the said defendant with respect to the charges in the bill of indictment and is apprised of the information possessed by said defendant with respect to the charges in said indictment.

3. That this application is made in good faith for the purpose of informing the defendant of the particular offenses upon which she stands charged and to which she must anwer.

4. That the defendant cannot properly answer the charges set forth in said indictment without the additional information asked for in said request for a bill of particulars.

108 5. That the indictment is so vague and general that the defendant cannot properly prepare her defense without further specifications asked for in said request for a bill of particulars.

O. John Rogge
O. John Rogge

Sworn to before me this
19th day of April, 1947.
Ida K. Ellenbogen
Ida K. Ellenbogen
Notary Public, State of New York
Residing in Bronx County
Bronx Co. Clks. No. 38, Reg. No. 83-E-8
N. Y. Co. Clks. No. 224, Reg. No. 229-E-8
Kings Co. Clks. No. 71, Reg. 155-E-8
Commission Expires March 30, 1948

* * * *

109 *Bill of Particulars*

The United States Attorney, responding to the order of the Court of this 25th day of April, 1947, that he file a bill of particulars as requested in Item II of the request of the defendant for bill of particulars as to "What is or constitutes the alleged matter under inquiry com-

mitted to the said Committee by the resolution set forth in said indictment", states as follows:

At the time Helen R. Bryan was summoned as a witness as alleged in the indictment, the Committee on Un-American Activities of the House of Representatives was engaged in that part of its investigation which concerned the activities of the Joint Anti-Fascist Refugee Committee, an unincorporated association, of which the defendant, Miss Bryan, was Executive Secretary.

George Morris Fay
George Morris Fay
United States Attorney
Charles B. Murray
Charles B. Murray
Assistant United States
Attorney

I hereby certify that I have this 25th day of April, 1947, sent a copy of the foregoing bill of particulars by official United States mail to O. John Rogge, Esquire, and Benedict Wolf, Esquire, attorneys for defendant, at their address 160 Broadway, New York, New York.

Charles B. Murray,
Charles B. Murray,
Assistant United States
Attorney

• • • •

110 Filed May 5 1947 Charles E. Stewart, Clerk

Motion to Dismiss Indictment

The defendant moves that the indictment be dismissed on the following grounds:

1. The indictment does not state an offense against the United States if House Resolution #5, 79th Congress, establishing the Committee is unconstitutional.

2. The indictment does not state an offense against the United States since the House Resolution is unconstitutional in that it violates Article I, Section 1; Article I, Section 8, Paragraph 18; and the Ninth and Tenth Amendments of the United States Constitution.

3. The indictment does not state an offense against the United States in that the aforementioned House Resolution, which is enforceable by the penal sanctions contained in Section 192 of Title 2 of the United States Code, does not provide the ascertainable standard of guilt required by the Fifth and Sixth Amendments of the United States Constitution.

4. The indictment does not state an offense against the United States since the House Resolution "is so vague and indefinite as to permit the punishment of the fair use" of freedom of expression and therefore violates the First Amendment to the Constitution of the United States.

111 5. The indictment does not state an offense against the United States since the investigation authorized by the aforesaid Resolution contemplates legislation which would be unconstitutional under the First Amendment of the United States Constitution and the Resolution is therefore unconstitutional under Article I, Section 1; Article I, Section 8, Paragraph 18 and the Ninth and Tenth Amendments of the United States Constitution.

6. The indictment does not state an offense against the United States since the aforesaid Resolution violates the Fifth Amendment of the United States Constitution in that the Committee has so administered the Resolution "as practically to make unjust and illegal discrimination between persons."

7. The indictment fails to charge an offense against the United States since no default of subpoena served or to be served took place; the printed and written document which was served on the defendant and which purported to be a subpoena duces tecum was in fact a direction to the Sergeant at Arms or his special messenger requiring him

to summon the defendant and this written and printed document was served in lieu of a valid subpoena.

8. The second count of the indictment does not charge an offense against the United States in that the alleged subpoena duces tecum served on the defendant by its terms constituted an unreasonable search and seizure
112 and was invalid under the Fourth Amendment.

And for such other and further relief as to the Court may seem just and proper.

Dated: May 3, 1947.

O. John Rogge
O. John Rogge
160 Broadway
New York 7, N. Y.
WO 2-1437
Wolf, Popper, Ross & Wolf
By Benedict Wolf
160 Broadway
New York 7, N. Y.
WO 2-1437
Attorneys for Petitioner

* * * *

113 Filed May 21 1947 Charles E. Stewart, Clerk

Opinion

Indictments under U. S. Code, Title 2, sec. 192, for failure to produce documents subpoenaed by the House Committee on Un-American Activities; and for conspiracy to violate U. S. Code, Title 2, Sec. 192. On motions to dismiss indictments. Motions denied.

114 Charles A. Horsky, Esq., Washington, D. C., for the defendant Richard Morford, for the motion.

Abraham J. Isserman, Esq., Washington, D. C., for the defendant George Marshall, for the motion.

O. John Rogge, Esq., New York, N. Y., for the defendant Helen R. Bryan, and the defendants Edward K. Barsky et al., for the motion.

George Morris Fay, Esq., United States Attorney, and Charles B. Murray, Esq., Assistant United States Attorney, both of Washington, D. C., opposed.

In January 1945 the House of Representatives of the United States, by House Resolution No. 5, 79th Congress, 1st Session, created a Committee known as the Committee on Un-American activities, which was authorized to make investigations of "(1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

The defendants Richard Morford, George Marshall and Helen Bryan, have been indicted under U. S. Code, Title 2, Sec. 192,[1] for failure to comply with subpoenas *duces tecum*
115 Issued by the Committee and directing them to produce certain records before the Committee.

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1. U. S. Code, Title 2, Sec. 192, reads as follows:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one more nor more than 12 months."

The indictment against Richard Morford alleges that he was subpoenaed to produce "all books, records, papers and documents showing all the receipts and disbursements of money by the National Council of American-Soviet Friendship, Inc., and all correspondence, memoranda and communications with any and all persons, together with a complete list of all affiliated organizations, for the year 1945."

The indictment against the defendant, George Marshall, alleges that she was subpoenaed to produce "all books, records, documents and correspondenec pertaining to the National Federation for Constitutional Liberties relating to the solicitation and disbursement of funds with a list of contributors." This indictment also charges the defendant Marshall with refusal to answer questions as to whether he had any connection with an organization known as the Marshall Foundation.

The indictment against the defendant Helen R. Bryan alleges that she was subpoenaed to prodce "all books, ledgers, records and papers relating to the receipt and disbursement of money by or on account of the Joint Anti-Fascist Refugee Committee or any subsidiary or subcommittee thereof, together with all correspondence and memoranda of communications by any means whatsoever with persons in foreign countries for the period from January 1, 1945, to March 29, 1946."

The indictment against the defendants Edward K. Barsky and other consists of two counts. The first count avers that they were members of the Executive Board of the Joint Anti-Fascist Refugee Committee, and charges them with a conspiracy to defraud the United States
116 by encouraging the defendant Helen R. Bryan to refuse to produce records before the Committee; and further with a conspiracy to violate U. S. Code, Title 2, Sec. 192.

The second count of this indictment charges the defendants with the substantive offense of failure to comply with a subpoena directing them to produce "all books, ledgers, records and papers relating to the receipt and disbursement of money by or on account of the Joint Anti-Fascist Refugee Committee or any subsidiary or any subcommittee thereof, together with all correspondence and memoranda of communications by any means whatsoever with persons in foreign countries for the period from January 1, 1945, to March 29, 1946."

The defendants now move to dismiss the indictments for alleged failure to state an offense against the United States.

The principal contention advanced by the defendants is that the House Resolution under which the Committee acted, is invalid.

It is elementary that for use in connection with the exercise of its power to legislate and to appropriate funds, the Congress has the authority to secure information. Ordinarily legislation cannot be intelligently enacted without previously ascertaining facts from which conclusions can be drawn as to whether need for legislation exists and, if so, what form the legislation should assume. Similarly, detailed data are necessary in connection with the appropriation of moneys. Historically the control of the purse is one of the basic and vital functions of the legislative branch of the Government. Whenever necessary or desirable the Congress may secure the requisite facts by study and research, or by procuring information from persons who volunteer it. The Congress, however, is not limited to these sources of knowledge. It has the right to compel the disclosure of factual material. At times this is the only method by which necessary data can be obtained. For this purpose, the Congress may issue subpoenas to require the attendance of witnesses and to exact the production of records and documents. When resort is had to this course, the customary practice is to delegate the duty to a Committee.

117

Manifestly, the sole purpose for which the Congress may carry on investigations and secure information is in connection with the exercise of its legislative function and with the appropriation of moneys. It may not, for example, compel the divulgence of information for the purpose of ascertaining whether a crime has been committed as a basis for a criminal prosecution, since this is a matter for the judiciary and for the prosecuting officers of the Government. On the other hand, if the same information is desired for use in connection with legislation, the Congress has a right to demand it. The information sought to be secured by a Congressional Committee must be germane to the legislative or the appropriating function.

In connection with the exercise of these powers, however, the Congress is not limited to securing information precisely and directly bearing on some proposed measure, the enactment of which is contemplated or considered. The collection of facts may cover a wide field. Obviously in order to act in an enlightened manner, it may be necessary and desirable for the Congress to become ac-
118 quainted not only with the precise topic involved in prospective legislation, but also with all matters that may have an indirect bearing on the subject. For example, in connection with the regulation of interstate commerce, it may conceivably become desirable for Congress to secure facts bearing solely on some aspects of intrastate commerce. Or, in enacting criminal legislation, it may first become desirable to investigate conditions in States and localities involving violations of local law. In connection with appropriating funds and determining what allotments of moneys should be made, it may become desirable to obtain information covering a wide range. While the power of the Congress to carry on investigations is not without limit, nevertheless, the Congress has broad discretion in determining the subject matter of the study and the scope and extent of the inquiry. If the subject under scrutiny may have any possible relevancy and ma-

teriality, no matter how remote, to some possible legislation, it is within the power of the Congress to investigate the matter. Moreover, the relevancy and the materiality of the subject matter must be presumed. The burden is on one who maintains the contrary to establish his contention. It would be intolerable if the judiciary were to intrude into the activities of the legislative branch of the Government, and virtually stop the progress of an investigation, which is intended to secure information that Congress deems necessary and desirable in the proper exercise of its functions, unless the lack of materality and relevancy of the subject matter is clear and manifest.

The authorities unanimously and conclusively support the foregoing views. Thus, in *McGrain v. Daugherty*, 273 U. S. 135, 174-175, Mr. Justice Van Devanter discussed this question as follows:

119 "We are of the opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American legislatures before

"A legislative body cannot legislate wisely or effectively

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional pro-

visions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised."

In the cited case the Supreme Court observed that it is not necessary for the Resolution directing the investigation to avow in express terms that it is intended to be in aid of legislation. If it appears that the matter to be investigated is relevant or material to some subject over which the Congress may legislate, or in respect to which it may appropriate funds, the power to conduct the investigation exists.

In the case of *In re Chapman,* 166 U. S. 661, 670, Mr. Chief Justice Fuller, observed that it was not necessary that the Resolution authorizing the investigation should declare in advance what the Congress "meditated doing when the investigation was concluded."

In *Barry v. United States ex rel Cunningham,* 279 U. S. 597, 619, Mr. Justice Sutherland stated:

120 "The presumption in favor of regularity, which applies to the proceedings of courts, cannot be denied to the proceedings of the Houses of Congress, when acting upon matters within their constitutional authority."

In *United States v. Norris,* 300 U. S. 564, 573, Mr. Justice Roberts stated:

"That it is within the constitutional province of Congress to institute investigations and to compel evidence with a view to possible exercise of its legislative function . . . is settled."

In a recent case in this jurisdiction, *Townsend v. United States,* 68 App. D. C. 223, 226, Mr. Justice Justin Miller in commenting on an objection that the investigating Committee involved in that case never recommended any remedial legislation, made the following observation:

"This is clearly beside the point. The act for which appellant was indicted occurred before the hearings of the committee were concluded. Its power to conduct a hearing for legislative purposes is not to be measured by recommendations for legislation or their absence."

That the subject of un-American and subversive activities is within the investigating power of the Congress is obvious. Conceivably, information in this field may aid the Congress in legislating concerning any one of many matters, such as correspondence with foreign governments (U. S. Code, Title 18, sec. 5); seditious conspiracy (*Id.* Sec. 6); prohibition of undermining the morale of the armed forces (*Id.* Sec. 9); suppression of advocacy of overthrow of the Government (*Id.* Sec. 10) the registration of organizations carrying on certain types of propaganda (*Id.* Secs. 14 and 15); qualifications for entering and remaining in Government service;
The authorization of Governmental radio broad-
121 casts to foreign countries; and other innumerable topics. Similarly such information may be helpful in appropriating funds.

The argument is advanced by counsel that the Resolution is invalid because it relates to freedom of speech, in respect to which the Congress may not legislate. This contention is without merit. Freedom of speech is, indeed, one of the fundamental rights of every person in a democracy. It is guaranteed and safeguarded by the First Amendment to the Constitution of the United States and is one of the basic rights of every inhabitant of the United States. No one who has any conception of the meaning of democracy would tolerate any encroachment or inroad on freedom of speech. It is not to be lightly assumed, however, that the Congress will enact legislation repugnant to the Constitution. A presumption of validity attaches to every Act of Congress. The burden of proof is on the person attacking its constitutionality. *A fortiori,* the courts may not presume in advance that the Congress will transgress the Constitution. The courts are not the sole guardians of the Constitution. That duty is shared with the other branches of Government, who are under an equal obligation to observe the limitations of the fundamental instrument. It is not to be presumed that the Congress will ignore its duty. Moreover, the right of freedom of speech is, in it-

self, a qualified right. The First Amendment does not, for example, preclude the Congress from excluding obscene matter from the mails or from the channels of interstate commerce. It does not guarantee to any one the right to incite others to commit a crime. It does not preclude the Congress from punishing persons who advocate the overthrow of Government by force. It does not bar the
122 Congress from limiting certain activities of Government employees, although similar activities are within the rights of all other citizens. Other limitations on the right of freedom of speech will occur to every thinking person. In any event, information to be obtained by this investigation is not limited in its use to legislation in respect to freedom of speech, but as heretofore indicated, may be utilized in respect to legislation on other subjects.

It is urged further that the Resolution is unconstitutional because it is too indefinite, in that the words "un-American" and "subversive" are not defined and do not have a precise and well-established meaning. In support of this contention, reliance is placed on the general proposition of law that a penal statute which does not provide an ascertainable standard of guilt is violative of the due process clause of the Fifth Amendment and is, therefore, invalid. This doctrine has been established by a line of cases of which *United States v. Cohen Grocery Co.*, 255 U. S. 81, is typical. These decisions, however, are directed solely to penal statutes and relate to the well-known rule of law that no one sholud be punished criminally for an act which at the time he committed it he was unable to ascertain would be considered a crime. This rule, however, does not apply to statutes of other types.

There is nothing to the contrary in the case of *Kraus & Bros. v. United States*, 327 U. S. 614, 620. That case involved the validity of a regulation issued by the Administrator of the Office of Price Administration, to which a criminal sanction was attached. The court held that the

regulation was subject to the same test as a penal statute. This line of reasoning, however, does not apply to the Resolution involved in the instant case.

123 No doubt many an Act of Congress may be found in which general terminology is intentionally or unintentionally employed. This is true of the present Resolution. The Committee is directed to investigate un-American and subversive activities. The exact scope of an investigation cannot always be charted and bounded in advance with the precision of a survey. In conducting a research, an inquiry, or an investigation, some discretion must be left to those to whom the task is entrusted, if the objective is to be attained. If we analyze the words "un-American" and "subversive" as used in the Resolution, there are some activities which everyone will agree are un-American and subversive, and there are others which everyone will place in the opposite group. Between the two extremes, no doubt, there will be some gradations in respect to which persons may well differ. There may well be differences of opinion as to the exact application or meaning of these terms, or as to whether some particular activity falls in one class or the other. This circumstance does not deprive the Congress of the power to investigate un-American and subversive activities, and for the purposes of carrying out its duties to vest in the investigating Committee the discretion to make a preliminary determination as to what activities are comprised within these two terms.

It is argued, however, that a person who is directed to appear or produce documents before the Committee may be at sea in endeavoring to determine whether the Committee is acting within its jurisdiction. It must be borne in mind, however, that the statute (U. S. Code, Title 2, Sec. 192) which punishes failure to comply with a sub-

124 poena or to answer questions, is definite and makes a willful default a misdemeanor. A person who declines to comply with a direction of the Committee on the basis of a claim that the Resolution creating it is invalid,

r that the Committee is exceeding its jurisdiction, acts at is peril. The provisions of an investigating Resolution re not drawn primarily for the benefit of a witness, but re framed for the guidance of the Committee. There are nany situations in which a person assumes a risk in deter-nining whether what he intends to do constitutes a crime. This is true, for example, in respect to violations of the nti-trust laws, because what constitutes an illegal re-straint of trade is frequently a debatable matter.

In *Nash v. United States*, 229 U. S. 373, 377, Mr. Justice Holmes aptly remarked:

". . . the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here: he may incur the penalty of death."

In the light of the foregoing considerations, it is the conclusion of this Court that the House Resolution creating the Committee on Un-American Activities is valid.

It is further urged that the subpoenas as set forth in the indictments, are too broad and are, therefore, violative of the Fourth Amendment. Whether a subpoena is too broad cannot always be determined from the terms of the document, but is a mixed question of law and fact. Consequently, the question should not be determined on a motion to dismiss the indictment for insufficiency. It
125 may be observed that each of the subpoenas is limited to documents relating to a specific topic, or is restricted to specified periods, or both. Somewhat similar subpoenas were held valid in *Brown v. United States*, 276 U. S. 134, 138; and *Wheeler v. United States*, 226 U. S. 478, 483. Moreover, there may conceivably be a question as to whether under the circumstances of this case, the defendants are entitled to assert the privilege guaranteed by the Fourth Amendment, *United States v. White*, 322 U. S. 694, 704. These matters can be determined only at the trial on the facts.

Finally, in the case of *United States v. Edward K. Barsky et al*, it is urged that the first, or conspiracy count, of the indictment is insufficient in that it charges the defendants with a conspiracy to defraud the Government without, however, averring that the conspiracy was to be effectuated by deceit, craft, or trickery, or by means that are dishonest. Reliance is placed on *Hammerschmidt v. United States*, 265 U. S. 182, 188, in support of this objection. The first count of the indictment further charges, however, that the defendants conspired to commit an offense against the United States by violating U. S. Code, Title 2, Sec. 192. Since the allegation last mentioned sets forth a conspiracy that is subject to criminal prosecution, the first count of the indictment is sufficient. Consequently, it is not necessary to determine whether the additional allegations, that are assailed by the defendants, are sufficient if they stood alone.

Motion to dismiss indictments denied. Alternative motions for bills of particulars are also denied.

ALEXANDER HOLTZOFF
Associate Justice

May 20, 1947.

126 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

THURSDAY, APRIL 8, 1948

The Court resumes its session pursuant to adjournment: Hon. Richmond B. Keech, presiding.

United States v. Helen R. Bryan
Criminal No. 365-47
Charged with Vio. Sec. 192, Title 2, U. S. Code

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon the said jury upon their oath say that the defendant is guilty in manner and form as charged in the indictment; and thereupon the defendant motion

for a new trial and judgment of acquittal, coming on to be heard, after argument by the counsel, is submitted to the Court; whereupon the defendant is permitted to remain on bond pending sentence; and thereupon the case is referred to the Probation Officer of the Court.

127 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

WEDNESDAY, APRIL 28, 1948

The Court resumes its session pursuant to adjournment: Hon. Richmond B. Keech, presiding.

• • • •

United States vs. Helen R. Bryan
Criminal No. 365-47
Charged with Vio. Sec. 192, Title 2, U. S. Code

Come as well the Attorney of the United States, as the defendant in proper person, according to her recognizance; and by her attorneys, Messrs. O. John Rogge, Benedict Wolf and Robert H. Goldman; and thereupon the defendant's motion for judgment of acquittal or new trial, coming on to be heard, after argument by Counsel, is by the Court denied and thereupon it is demanded of the defendant what further she has to say why the sentence of the law should not be pronounced against her and she says nothing except as she has already said; whereupon it is considered by the Court that, for her said offense, the said defendant be committed to the custody of the Attorney General or her authorized representative for imprisonment for a period of Three (3) months and to pay a fine of Five Hundred ($500.00) Dollars; and thereupon the Court fixed the amount of bond at Five Hundred ($500.00) Dollars pending appeal.

B United States Court of Appeals for the District of Columbia

Filed Apr 29 1948 Joseph W. Stewart, Clerk

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

(To accompany duplicate notice of appeal to the United States Circuit Court of Appeals)

District Court of the United States for the District of Columbia

United States vs. Helen R. Bryan

Criminal No. 365-47

1. Indictment for Vio. Sec. 192, Title 2, U. S. Code Filed March 31, 1947
2. Arraignment April 7, 1948
3. Plea to indictment Plea Not Guilty April 7 1948
4. Motion to withdraw plea of guilty denied
5. Trial by jury, April 7, 1948
6. Verdict or finding of guilt Guilty as indicated April 8, 1948
7. Judgment—(with terms of sentence) Three (3) months and to pay a fine of Five Hundred Dollars ($500.00) entered April 28, 1948 (Keech, J.)
8. Notice of appeal filed April 28, 1948

Date April 29, 1948

Attest Harry M. Hull, Clerk.
By Helen M. McIntosh
Deputy Clerk

N. B.—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in rules VII, VIII, and IX.

• • • •

128 *Notice of Appeal*

Name and address of appellant
Helen R. Bryan, 58 Bank Street, New York, N. Y.

Name and address of appellant's attorneys
O. John Rogge, Esq., 401 Broadway, New York, N. Y.
and
1700 Eye Street, N. W., Washington, D. C.
NA 6471
Wolf, Popper, Ross & Wolf
160 Broadway, New York 7, N. Y.
and
902 20th Street, N. W.
Washington 6, D. C.
RE 8165

Offense
Violation of Title 2 U. S. C., Section 192

Concise statement of judgment or order, giving date, and any sentence
Verdict of guilty as charged—April 8, 1948,
$500.00 fine and sentence of 3 months
date, April 28, 1948

Name of institution where now confined, if not on bail
Appellant on bail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia from the above-stated judgment.

Helen R. Bryan
Helen R. Bryan
O. John Rogge
O. John Rogge
By: Benedict Wolf
Wolf, Popper, Ross & Wolf

April 28, 1948

• • • •

3 *Proceedings*

THE DEPUTY CLERK OF COURT: United States vs. Helen R. Bryan.

MR. ROGGE: May it please the Court, I am expecting my client momentarily. She is completing a telephone call

to New York. I would like to state to Your Honor what it is, and I have mentioned to her—

THE COURT: Would you like to come to the bench?

MR. ROGGE: Yes, sir.

(Thereupon counsel approached the Court's bench and the following occurred:)

MR. ROGGE: I have mentioned to her that from a factual standpoint I do not think there would be any disagreement between the Government and myself and, under the circumstances, I do not feel warranted in putting the Government to the expense of a jury trial and, for my part, I was willing to stipulate, for instance, that a certain document which Mr. Murray could introduce in evidence if he wants to, was served on her, that the Government contends is a subpoena; I don't, but Your Honor has ruled it is.

That on a particular day she appeared before the House Committee, and that the secretary, if called, would testify to certain things set forth in the record.

That we would admit it is under Section 634 of Title 28.

That we would stipulate that Mr. Adamson, if
4 called, would testify that she appeared but did not produce the books and records, and that the testimony of the Barsky case would be admissible here with the same objections, subject to the same objections we offered with reference to the conduct of the House Committee, and anything of a nature Mr. Murray would be willing to stipulate to.

I have assured her that is not a plea of guilty; she has not been arraigned, and since there is no contest on the facts between us we will be happy to stipulate the facts suggested to Mr. Murray, and we would submit it to you, and she is telephoning New York about the situation.

THE COURT: I think it is a very sensible suggestion.

MR. ROGGE: I think it is, and if Your Honor should find her guilty I should then go ahead and introduce something of her background, which I think is very good; the

Government has called her a scapegoat, and she has testi fied for the Government three different times, one tim when Your Honor offered her the privilege, and that ther should be no more than a fine from which she will appea and if that meets with Your Honor's approval I think w can dispose of it in fifteen minutes after she gets here.

This is a very summary statement, and the other point would be the constitutionality of the House Committee.

THE COURT: Oh, certainly.

MR. MURRAY: We will go into that as we go alon anyway.

THE COURT: I have no idea that I would trea her differently than any of the other defendants.

MR. ROGGE: That is the suggestion I would lik to make to Your Honor.

THE COURT: I want to say to you I make no prom ises.

MR. ROGGE: Oh, surely, but the reason I want to d it this way is that I have no—I am making this suggestio as much for myself as well as anyone else, namely, haven't any factual dispute with the Government.

THE COURT: You have a duty to the Court as well a your client, Mr. Rogge. You have first to protect you client to the extent the law gives you the right and I, fo one, want you to do that; on the other hand I do not thin there is any reason in the world of doing it the other wa if you can preserve your rights, and I think you can.

MR. MURRAY: She is here now.

MR. ROGGE: Will Your Honor indulge me for abou five minutes?

THE COURT: Surely. Do you want to take her ou side to talk to her?

MR. ROGGE: I think that would be better.

THE COURT: All right, sir.

(Thereupon counsel retired to the trial table. Counse for the defendant and the defendant retired from the cour room, and upon returning to the courtroom the followin occurred:)

6 MR. ROGGE: My statement to Your Honor as—

THE COURT: Maybe you had better come to the bench.

(Thereupon counsel approached the Court's bench and the following occurred:)

THE COURT: Until we definitely know what we are going to do.

MR. ROGGE: She insists on a jury trial. However, I want to stipulate as many factual situations as possible. Certainly that goes for pertinency, and also goes, if Mr. Murray is agreeable, as to the proof we made as to the conduct of the House Committee.

I am also willing to stipulate that if the reporter were called he would testify that certain proceedings took place on April 4, so he doesn't have to call the reporter.

He has Mr. Adamson. I suppose he might as well put him on the stand and meet that.

THE COURT: We have waited a day pretty near for your convenience, and it is now after two o'clock, and we are not going to kill anybody who isn't satisfied but if there is anything you can do without prejudicing your client I am asking you to do it.

MR. ROGGE: I am doing it, and I am asking Mr. Murray if there are any additional facts he wants to stipulate.

MR. MURRAY: I will need to prove that the defendant was summoned.

7 MR. ROGGE: I will agree that a certain document, and you may have it marked, was served on the defendant. We may say it is not a subpoena. You say it is a subpoena.

MR. MURRAY: And do you stipulate that the person serving it was, that is, that McDavitt did serve it?

MR. ROGGE: Yes, that was as you had it before, except we brought out on cross examination that he was neither a sergeant-at-arms nor a special messenger of the sergeant-at-arms.

MR. MURRAY: That is correct. I will stipulate that he was neither one.

THE COURT: Let's see, we have pertinency, and by pertinency we will make use of these exhibits by both sides, with objections to either side.

MR. ROGGE: Right.

MR. MURRAY: And the summons, that she was served.

THE COURT: Yes, she was served, in the same manner as in the other case.

MR. MURRAY: Yes.

THE COURT: And you say not by a sergeant-at-arms?

MR. ROGGE: Right.

THE COURT: And you are contending that is not sufficient?

MR. ROGGE: Yes.

THE COURT: Now we have the pertinency; you did say something else.

8 MR. ROGGE: Yes, I agree that the witness, if he were called, would testify that the document represents a correct statement of what took place on April 4 before the House Committee on Un-American Activities.

THE COURT: Now, you are referring to her testimony. I don't know if you want to use this.

MR. MURRAY: I shall call Mr. Adamson to testify that she appeared and admitted she was the custodian, but did not produce the records. And then, of course, I shall consent to the use of any of the portions of her testimony that the defense think ought to be received in explanation.

THE COURT: I have read this record. She has stated in here that she is doing it on her own responsibility.

MR. MURRAY: That is right.

THE COURT: In more than one place she says she is the custodian and takes the full responsibility for it. I do not know what issue of fact you are going to the jury on, and that is not my concern, I suppose.

MR. ROGGE: I have already stated to Your Honor that there are no factual differences between the Government and myself. Your Honor knows if there is a factual dispute indicated by—

THE COURT: I would want you to, but I am unable to see it.

MR. ROGGE: That is the reason I call it to Your Honor's attention for your suggestion.

THE COURT: All right. Let us proceed as far as we can.

MR. ROGGE: The question is does she have a right to a jury trial, and she is insisting on it, and here I am. It places me in an embarrassing situation. All I can do is to disclose it to the Court.

THE COURT: That is correct.

(Thereupon counsel returned to the trial table and the following proceedings were had in open court:)

MR. MURRAY: If Your Honor please, the defendant has not been arraigned.

MR. ROGGE: Waive the reading of the indictment.

THE DEPUTY CLERK OF COURT: Helen R. Bryan, in Criminal Case No. 365-47, in which you are charged with violation of Section 192, Title 12 of the United States Code, how do you wish to plead?

THE DEFENDANT: Not guilty.

(Thereupon the jury panel was sworn on voir dire.)

* * * *

(Thereupon counsel approached the Court's bench and, out of the hearing of the prospective jury, the following occurred:

MR. ROGGE: I am in an embarrassing situation in this case. I want to represent this woman—

THE COURT: Do you want me to ask all these questions on the voir dire?

MR. ROGGE: We submitted two lists, and I think the best thing is to follow the second list and let it go. There was only one that was stricken out.

THE COURT: And we changed these.
MR. ROGGE: Yes.
THE COURT: Do you know any others?
MR. MURRAY: No, Your Honor.
MR. ROGGE: This was on the second list.

• • • •

16 THE COURT: Is any member of the panel an employee of the Government?
(A number of jurors indicated in the affirmative.)
THE COURT: I will start with juror number 1. Give your name, please.
JUROR HOFFMAN: Gotthard A. Hoffman.
THE COURT: Where are you employed?
JUROR HOFFMAN: Navy Yard, Naval Gun Factory.
THE COURT: The next juror in the box, number 6.
17 JUROR MacDONALD: General Accounting Office.
THE COURT: Number 9.
JUROR MILLER: William E. Miller, messenger, A. A. F.
THE COURT: Number 10.
JUROR MORRIS: Blanche E. Morris, Bureau of Engraving, printer's assistant.
THE COURT: That is all in the box as Government employees.
MR. ROGGE: May we approach the bench?
THE COURT: Yes.
(Thereupon counsel approached the Court's bench and, out of the hearing of the prospective jurors, the following occurred:)
MR. ROGGE: For the purpose of the record, and on the basis of the argument I made in the prior proceeding, I make a motion in this case that all Government employees be excluded from the jury panel. I want to save that point in the record.

MR. MURRAY: This other trial, of course, is Ernestina Fleischmann, 368-47.

MR. ROGGE: We argued it at length before Your Honor.

THE COURT: That was identifying the case.

(Thereupon counsel returned to the trial table and, the following proceedings were had in open court:)

THE COURT: Starting over here.

JUROR HANCOCK: Benjamin S. Hancock, truck driver.

JUROR WALLIN: William L. Wallin, Department of Labor.

JUROR ENDRES: Joseph E. Endres, General Accounting Office.

THE COURT: Anyone else in the first row?

JUROR GRASSI: Orlando R. Grassi, City Post Office.

THE COURT: Anyone else?

JUROR STARK: Robert J. Stark, United States Naval Research Laboratory.

THE COURT: Anyone else?

Is any member of the panel an applicant for a position with the Government?

JUROR WILKINS: Norma L. Wilkins, Bureau of Standards.

THE COURT: Is any member of the immediate family of any member of this panel a Government employee, or an applicant for a Government position? Mr. Wallin?

JUROR WALLIN: My wife is employed at the War Department.

THE COURT: On the end?

JUROR HALFERTY: Dale Halferty; my brother is employed at the District Treasury.

THE COURT: Your name?

JUROR CARL: Frederick Carl; I have a brother in the Pentagon Building.

* * * *

MR. MURRAY: The Government is content.

MR. ROGGE: We have used our challenges.

THE DEPUTY CLERK OF COURT: The jurors will rise, place their right hands on the Bible and be sworn. The defendant will rise and face the jury

(Thereupon the following named jurors were sworn to try the case:)

1. Grace M. Sorrell
2. Gustav A. Katz
3. Samuel R. Kelly
4. Alice R. Lattisaw
5. Eleanor Loeb
6. Robert J. Stark
7. Sidney W. Marks
8. Carlon Mickey
9. William E. Miller
10. Solomon Stichman
11. Margaret L. Newman
12. Somerset D. Roby, Jr.

• • • •

MR. MURRAY: I offer in evidence House Resolution No. 5 as Government Exhibit No. 1.

No. 2, the Journal of the House showing the personnel of the committee.

No. 3, the subpoena.

And may I refer to these briefly?

THE COURT: I understand that there is no objection?

MR. ROGGE: As to the third document, Judge, I raise the objection as I did before. I do not raise it as to the nature of the proof, but I do raise the objection that it is not a subpoena. I raise no objection to the form of the evidence.

THE COURT: Subject to that it may be received in evidence. All exhibits are received in evidence.

(Thereupon House Resolution No. 5 was by the Court received in evidence as Government's Exhibit No. 1.)

(Journal of the House showing personnel of committee was by the Court received in evidence as Government's Exhibit No. 2.)

(The subpoena referred to was by the Court received in evidence as Government's Exhibit No. 3.)

MR. MURRAY: Members of the jury, Government Exhibit No. 1, which has been received in evidence is a resolution of the House of Representatives dated January 3, 1945, which authorizes the creation by the House of a Committee on Un-American Activities to consist of nine members, and authorizing that committee to make certain investigations. The nature of it need not be given in detail here because it will not be a fact at issue before you, but this resolution issued on January 3, 1945, did authorize the creation of that committee, and did authorize that committee to make a particular kind of investigation.

Government Exhibit No. 2 has been received in evidence, and that is a certified transcript from the Journal of the House of Representatives containing certain portions of the Record of the House, and indicating who are the personnel, who are the members of the House appointed to be the nine members of that House committee authorized by the resolution. I have already read the complete names of the members to you, and I will not repeat except to say that the chairman was John S. Wood of Georgia.

Government Exhibit No. 3 has been received in evidence, and I am authorized to say that it is stipulated and agreed between counsel for the Government and counsel for the defendant, with the approval of the Court, that this paper I have here, a photostatic copy of it, is a correct copy of a paper which was issued by authority of the chaiman of the House Committee on Un-American Activities on March 29, 1946, and that paper was placed in the hands of George V. McDavitt, an investigator at that time of the House Committee on Un-American Activities, and was by him served upon Miss Helen R. Bryan, the defendant in this case, in New York City at 11:37 a. m. on March 29, 1946, at the offices of the Joint Anti-Fascist Refugee Committee at 192 Lexington Avenue, New York City, New York; that is that this original paper was handed to her for her to read, and a copy was left with her at that time.

I shall now read the original:

"By authority of the House of Representatives of the Congress of the United States of America.

"To the Sergeant at Arms, or his special messenger:" and I may interrupt at that point to put into the record the stipulation that Mr. McDavitt did answer the description.

THE COURT: It is understood.

MR. MURRAY: I shall resume the reading:

"To the Sergeant at Arms, or his special messenger:

"You are hereby commanded to summon the Joint Anti-Fascist Refugee Committee, 192 Lexington Avenue, New York City, a voluntary organization, to be and appear before the Un-American Activities Committee, of the House of Representatives of the United States, of which the Honorable John S. Wood is chairman, and to bring with you all books, ledgers, records, and papers
34 relating to the receipt and disbursement of money by or on account of the Joint Anti-Fascist Refugee Committee or any subsidiary or subcommittee thereof, together with all correspondence and memoranda of communications by any means whatsoever with persons in foreign countries. The said books, papers, and records demanded herein are for the period from January 1, 1945, up to and including the date of this subpoena, in their chamber in the City of Washington, on April 4, 1946, at the hour of 10 a. m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

"Herein fail not, and make return of this summons.

"Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, this 29th day of March, 1946."

Signed "John S. Wood, Chairman."

Attested by "John W. Carrington," who was the clerk of the committee.

On the back is what is called the return of the one serving the paper, that is, he was to report on his service, and this shows that it was served on Miss Helen R. Bryan at 11:37 a. m. on March 29, 1946, at the offices of the Joint Anti-Fascist Refugee Committee, located at 192 Lexington Avenue, New York City, New York, by George V.
35 McDavitt, investigator of the House Committee on Un-American Activities.

Mr. Adamson, will you take the stand, please?

Thereupon—

Ernie Adamson

was called as a witness by the United States and, being first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. MURRAY:

Q Mr. Adamson, your full name, please? A Ernie Adamson.

Q And you are an attorney at law? A Yes.

Q At this time practicing and residing in Pittsburgh, Pennsylvania? A Yes, sir.

Q Were you in April, 1946, counsel for the Committee on Un-American Activities of the House of Representatives? A Yes, sir.

Q And the chairman at that time was who? A John S. Wood of Georgia.

Q And the clerk? A John W. Carrington.

Q Are you, and were you then, familiar with the summoning of Miss Helen R. Bryan here to appear be-
36 fore the committee on April 4, 1946? A Yes, I remember Miss Bryan.

Q What part in the proceedings and hearing before that Committee on Un-American Activities on April 4, 1946, did you take? A Well, I conducted the examination of the witnesses called when they appeared.

Q I beg your pardon? A When they appeared I conducted the examination.

Q Did you question Miss Bryan? A Yes, sir.

Q She did appear before the committee on that day? A Yes.

Q And did she state that it was in response to the summons that was issued and directed to the Joint Anti-Fascist Refugee Committee? A That is true. I think she brought in a copy of the subpoena that had been left with her, and I believe she distributed a statement of some kind she had prepared.

Q All right, I will just ask you a question: Did Miss Bryan admit herself to be at that time the custodian of the records called for?

MR. ROGGE: I object to the question, if the Court please. If he wishes to state what was said, that is all right.

THE COURT: Very well, reframe the question

MR. MURRAY: In view of that objection, Your 37 Honor, I think I shall make use of portions of this exhibit.

THE COURT: Very well. I understand there is no objection.

MR. ROGGE: We have stipulated as to the hearing, but we have objected to the admissibility under Section 34.

THE COURT: You preserved that to the exhibit and offer.

MR. ROGGE: There is no objection to the form of the evidence.

THE COURT: Very well.

MR. MURRAY: Members of the jury, I shall now read to you from portions of the proceedings before this Committee on Un-American Activities at Washington, D. C., on April 4, 1946, before which this defendant, Miss Helen R. Bryan, appeared as a witness. I am permitted to say to you that it has been stipulated and agreed between counsel, with the approval of the Court, that what I am reading from, and perhaps I should designate it, if I may, in this manner, is a printed document consisting of a total

of 105 pages, which is a printed transcript of the proceedings before the committee on April 4, 1946, which became an appendix to a part of a committee report of the House of Representatives of April 16, 1946, known as Report No. 1936 of the Seventy-Ninth Congress, Second Session.

It has been agreed, and is agreed to be the fact that if the reporter who took these proceedings were to appear before you he would testify that he did take these
38 proceedings by the use of a stenotype machine, and did cause his report of the notes to be transcribed by reading them into dictaphone records, and thereafter by checking these with his notes, and that a typewritten transcript of that was made, and that they were to the best of his knowledge an accurate transcript of the proceedings which he had taken, and that transcript later was sent to the printer and became the printed document which I am reading from at this time.

May I now proceed to read from it?

MR. ROGGE: You have the additional part?

THE COURT: Yes, about the notes that were destroyed at a certain time?

MR. ROGGE: I wasn't going to refer to that. I assumed that was a part of the stipulation. All I was going to suggest, if counsel is going to read part of it he should read all of it.

THE COURT: I think he may read such part as he may see fit, and you may supplement it with such parts as you see fit.

MR. MURRAY: Your Honor, the point I make in reading it—you mean that statement at the end?

MR. ROGGE: No.

MR. MURRAY: Only the questions and answers?

MR. ROGGE: Yes.

MR. MURRAY: I will read all of it.

Another point I should have mentioned in con-
39 nection with the printed transcript was that if that reporter, stenotype reporter, his name is Howard

B. Smith, a reporter who has been reporting such proceedings for more than 20 years at the Capitol, if he were called he would testify that the stenotype notes he made are no longer in existence, having been destroyed by him, along with other notes, in April or May of 1947, which was a month or two months after the indictment in this case was returned to the Court.

I am reading beginning at page 96:

"Testimony of Miss Helen R. Bryan, Executive Secretary, Joint Anti-Fascist Refugee Committee, New York City.

"(The witness was duly sworn by the chairman.)

"Mr. Adamson. Will you give your name and address to the reporter, Miss Bryan?

"Miss Bryan. Helen R. Bryan, 58 Bank Street, New York City.

"Mr. Adamson. And what is your official connection with the Joint Anti-Fascist Refugee Committee?

"Miss Bryan. I am executive secretary.

"Mr. Adamson. What is the office address?

"Miss Bryan. 192 Lexington Avenue.

"Mr. Adamson. And you are employed there, are you?

"Miss Bryan. Yes, I am executive secretary.

"Mr. Mundt. Is that a paid position?

"Miss Bryan. Yes, it is.

40 "The Chairman. By whom are you employed?

"Miss Bryan. By the executive board.

"The Chairman. How long have you been so employed?

"Miss Bryan. Three years ago this March, last March.

"The Chairman. The executive board fixes your compensation?

"Miss Bryan. Yes.

"The Chairman. And fixes your tenure of office?

"Miss Bryan. They do.

"The Chairman. They have authority to terminate it at will?

"Miss Bryan. Well, I suppose I could be fired.

"The Chairman. That is what I say.

"Miss Bryan. Yes, sir.

"The Chairman. And the authority that could fire you would be the executive board?

"Miss Bryan. Yes, sir.

"Mr. Mundt. Do you have a written employment contract?

"Miss Bryan. No, sir.

"Mr. Mundt. You are hired from month to month on a monthly salary?

"Miss Bryan. Yes.

"The Chairman. When you first went to work for this committee the executive board employed you?

41 "Miss Bryan. Yes.

"The Chairman. And fixed your compensation?

"Miss Bryan. Yes.

"The Chairman. And did they fix a specified term for your employment or not?

"Miss Bryan. That I don't remember.

"Mr. Landis. Were you hired by the year or the month?

"Miss Bryan. I am now hired by the year.

"The Chairman. And that arrangement was made between you and the executive board?

"Miss Bryan. That's right.

"The Chairman. Do you know of any other authority over the activities or policy making of the Joint Anti-Fascist Refugee Committee except the executive board? I mean with reference to fixing its policies and employing its employees, directing their activities?

"Miss Bryan. It is the executive board, yes.

"Mr. Adamson. You are here today in compliance with a subpena which was served upon the committee by this office?

"Miss Bryan. That is correct.

"Mr. Adamson. Have you got the pink copy of your subpena with you?

"Miss Bryan. I didn't know I had to bring it.

42 "Mr. Adamson. You don't have to, but you can mail it in to us.

"The Chairman. Have you got it with you?

"Miss Bryan. No.

"Mr. Adamson: Look at one of these pink copies of subpenas here and tell us if that is the form and substance of the one which was served upon you.

"Miss Bryan (after examining a subpena). Yes, I think it is.

"Mr. Adamson. And this subpena was addressed to the Joint Anti-Fascist Refugee Committee? Is that correct?

"Miss Bryan. Yes.

"Mr. Adamson. And was served upon you because you are the executive secretary and in charge of the office?

"Miss Bryan. Yes.

"Mr. Adamson. Can you recall when the subpena was served?

"Miss Bryan. Yes, I think so. I think it was Friday morning, between 11 and 1 o'clock.

"Mr. Adamson. Last Friday?

"Miss Bryan. Last Friday morning.

"The Chairman. That will be one week tomorrow?

"Miss Bryan. That is correct.

"Mr. Adamson. Have you produced here today,

43 in compliance with the requirements of the subpena, the books, papers, and records of the Joint Anti-Fascist Refugee Committee?

"Miss Bryan. I am the executive secretary—

"Mr. Adamson (interposing): Now wait just a minute, Miss Bryan. Will you say 'yes' or 'no,' and then we will take up your statement?

"Miss Bryan. No, I would prefer to read my statement. It is very short, Mr. Adamson.

"Mr. Adamson. I don't know that there would be any objection to letting you make the statement.

"The Chairman. First state whether you have got the books.

"Miss Bryan. I prefer this other way.

"The Chairman. But we prefer it that way, and the question has been asked you if you have got them.

"Miss Bryan. But I think I am entitled to read this. It is very short.

"The Chairman. Do you now comply with that subpena? If you say you don't know, then whatever explanation you have got there, you can give it.

"Miss Bryan. I prefer to read this statement. It is very brief.

"The Chairman. After all, you see, you are the witness. You have been asked a question. What is
44 your answer to it? If you want to read your statement, we are willing for you to do it after you answer the question.

"Miss Bryan. Well, as executive secretary of the Joint Anti-Fascist Refugee Committee, as custodian of the books and records, I was advised by my executive board to find out what steps I should take, within my legal rights, to protect the books and records and correspondence of this organization.

"The Chairman. From whom?

"Miss Bryan. I was advised to consult with counsel.

"The Chairman. You were advised to protect them from what?

"Miss Bryan. To protect them from any kind of investigation which would interfere with the relief we are carrying on.

"The Chairman. Particularly this committee of Congress?

"Miss Bryan. Yes.

"The Chairman. When did you get that instruction?

"Miss Bryan. Well, Mr. Wood, I don't remember the exact time.

"The Chairman. Has it been since you were served with the subpena?

"Miss Bryan. Oh, no.

45 "The Chairman. You were served with this before?

"Miss Bryan. That is right.

"Mr. Landis. After you were served with the other subpena?

"Miss Bryan. That's right.

"The Chairman. After you were served the first time?

"Miss Bryan. Yes, sir.

"Mr. Mundt. Before or after your appearance before this committee?

"The Chairman. Just a moment—then you conferred with an attorney by the name of Wolf?

"Miss Bryan. I conferred with counsel.

"The Chairman. Just name him.

"Miss Bryan. Mr. Benedict Wolf.

"The Chairman. Will you identify him. Mr. Benedict Wolf is counsel for the executive board of the Joint Anti-Fascist Refugee Committee?

"Miss Bryan. Mr. Benedict Wolf is the counsel for the Joint Anti-Fascist Refugee Committee.

"The Chairman. He is employed by the executive board and paid by the executive board?

"Miss Bryan. That I cannot tell you.

"The Chairman. You have not paid him.

"Miss Bryan. I have not; no.

"The Chairman. And you conferred with him
46 because you were told that he was the counsel for the Joint Anti-Fascist Refugee Committee?

"Miss Bryan. No you see, my subpena came first.

"The Chairman. I understand, but you knew he was the counsel for the Joint Anti-Fascist Refugee Committee? You stated that.

"Miss Bryan. I was subpenaed as the executive secretary of the Joint Anti-Fascist Refugee Committee.

"The Chairman. But you say you were subpenaed and that the board had a meeting and directed you to take all

legal steps, consult counsel and take all legal steps to protect the books, records, and papers. You are complying with that subpena.

"Miss Bryan. No; I didn't say that.

"The Chairman. You said protect you against investigation, and you had no other—

"Miss Bryan (interposing). No; protect the books and records of our organization.

"The Chairman. From investigation?

"Miss Bryan: No; I said—you asked me what I was protecting from, and I said that the board had advised me to consult with counsel to see what steps could be taken within my legal rights to protect the books and records of our organization.

"The Chairman. From investigating committees?

47 "Miss Bryan. No.

"The Chairman. What I want to know is, Protect them from what?

"Miss Bryan. I am telling you what my board told me.

"The Chairman. What did you want to protect them from?

"Miss Bryan. That is what the board said.

"The Chairman. Now, the board told you that after you had been served with a subpena to produce those books before this committee of Congress; didn't it?

"Miss Bryan. I would have to ask about that, because I am not sure.

"Mr. Landis. That was after you were subpenaed here before?

"Miss Bryan. It was before I was subpenaed; yes.

"Mr. Landis. I mean the last time. It was after your first subpena, wasn't it?

"Miss Bryan. That is what I don't actually remember.

"The Chairman. Why did you remember it a while ago when you said it was?

"Miss Bryan. No; what I don't remember, Mr. Wood—you don't understand—is whether I consulted with coun-

sel before I received the subpena or immediately afterward.

"The Chairman. Well, Miss Bryan, didn't you
48 testify in answer to my question that after you got your first subpena here your board gave you that instruction, and that you then went and talked to counsel? Isn't that what you testified?

"Miss Bryan. You see, I am a little confused about the exact date of when I received the first subpena.

"The Chairman. But I am asking you now if that isn't what you said a while ago.

"Miss Bryan. Would you ask that again?

"The Chairman. Didn't you testify that after you got the first subpena your board then told you to consult with your counsel and to use all legal means?

"Miss Bryan. I would like to consult counsel on that.

"The Chairman. Why?

"Miss Bryan. Because I would like to just get the dates straight. I don't want to say something that is not true.

"The Chairman. Would you be willing to swear to what he says?

"Miss Bryan. Yes.

"The Chairman. You would? You mean you would come back in here and give your oath that the date he gives you is correct? Is that what you mean to tell the committee?

"Miss Bryan. I think he would have it in his records. I don't have any records with me.

49 "The Chairman. And you would come back in here and swear on his records or on his statement when it was? Is that right?

"Miss Bryan. Yes. I am sure he would have it in his records, Mr. Wood.

"The Chairman. I am not asking you that. Are you willing then to come back in here and say that what he tells you is the truth?

"Miss Bryan. If he finds it in his records.

"The Chairman. That that is the truth?

"Miss Bryan. Yes.

"The Chairman. Then the committee would not be very much interested in that sort of testimony.

Was there anybody else seeking these books and records at the time you conferred with him the first time?

"Miss Bryan. Not that I know of.

"The Chairman. Then you understood, of course, that the instructions you had had reference to our efforts to get these books and records?

"Miss Bryan. I understood that.

"The Chairman. And you went and consulted Mr. Wolf?

"Miss Bryan. Correct.

"The Chairman. Then we will get back again to my question. Mr. Wolf is employed not by you but by the executive board of the Joint Anti-Fascist Refugee Committee? That is right, isn't it?

"Miss Bryan. That I don't know.

"The Chairman. He is not employed by you?

"Miss Bryan. No; I am sure of that.

"The Chairman. Why did you consult him?

"Miss Bryan. He was—we were advised that he was a competent lawyer.

"The Chairman. The lawyer for the Joint Anti-Fascist Refugee Committee?

"Miss Bryan. That I didn't know.

"The Chairman. That was the information you had?

"Miss Bryan. No.

"The Chairman. That is just what you just this minute said.

"Miss Bryan. I didn't say he was employed by the Joint Anti-Fascist Refugee Committee.

"The Chairman. You said just now that you understood he was their lawyer.

"Miss Bryan. No; I did not say that, Mr. Wood. I said I was advised to consult with him.

"The Chairman. And you were advised that by the board, the executive board?

"Miss Bryan. No.

"The Chairman. Whom were you advised by?

"Miss Bryan. One or two members of the ex-
51 ecutive board.

"The Chairman. By the members of the executive board?

"Miss Bryan. One or two members.

"Mr. Mundt. Was Dr. Barsky one of those members?

"Miss Bryan. Yes; he was.

"The Chairman. And following that advice you went and conferred with Mr. Wolf?

"Miss Bryan. Yes.

"The Chairman. And you are now carrying out Mr. Wolf's instructions?

"Miss Bryan. No; I am not, Mr. Wood.

"The Chairman. Whose instructions are you carrying out?

"Miss Bryan. Mr. Wood, Mr. Wolf explained to me—

"The Chairman (interposing): I am not asking about his explanation. I am asking at whose direction now are coming down here without these books and records?

"Miss Bryan. My own.

"The Chairman. Your own? You are taking full responsibility?

"Miss Bryan. I am.

"The Chairman. And why did you go to consult him, then?

"Miss Bryan. Because I wanted to know what
52 my legal rights were in such a case.

"The Chairman. After you consulted with him and he told you what, in his opinion, your legal rights were, you made up your mind?

"Miss Bryan. No.

"The Chairman. When did you make up your mind?

"Miss Bryan. He advised with me and pointed out to me—

"The Chairman(interposing). I just asked you when you made up your mind not to bring them?

"Miss Bryan. Before the last appearance.

"The Chairman. And that was after you conferred with him?

"Miss Bryan. Oh, yes.

"The Chairman. If the executive board of the Joint Anti-Fascist Refugee Committee should direct you by majority of that board to make those books, records, and papers available to this committee of Congress, would you do it or wouldn't you?

"Miss Bryan. I don't know, Mr. Wood.

"The Chairman. You don't know?

"Miss Bryan. No.

"The Chairman. Well, don't you know whether you would or whether you would get out as executive secretary?

"Miss Bryan. I don't know.

53 "The Chairman. So you mean now to tell this committee that you are acting arbitrarily, on your own initiative, and that the board could not control your action at all?

"Miss Bryan. No; I didn't say that.

"The Chairman. Can the board do it?

"Miss Bryan. Can the board control me?

"The Chairman. Yes.

"Miss Bryan. I said earlier that—

"The Chairman (interposing). Now, let us get along. Can the board control your actions?

"Miss Bryan. Certainly.

"Mr. Mundt. Do you feel that you have the support of the board in the decision which you say you are making on your own behalf not to give these records and books to the committee?

"Miss Bryan. I don't think that is a pertinent question.

"Mr. Mundt. You don't think it is pertinent to know whether the board is supporting your position or not?

"Miss Bryan. I don't think it is pertinent for me to answer that question.

"Mr. Mundt. Do you know?

"Miss Bryan. I don't think that is a pertinent question.

54 "Mr. Mundt. You decline to answer.

"Miss Bryan. I don't think it is pertinent.

"The Chairman. The question is whatever you think about it. Do you want to answer it or not. You have two alternatives. You can answer "Yes" or "No" or you can say you decline to answer it. Which do you do?

"Miss Bryan. What was the question again?

"The Chairman. Whether or not the board is supporting you in your action not to give us the books and records.

"Miss Bryan. I don't think that is a pertinent question.

"The Chairman. Do you decline to answer it for that reason?

"Miss Bryan. I say I don't think it is a pertinent question.

"The Chairman. I understand you said that half a dozen times. But I want to know whether you decline to answer it.

"Miss Bryan. Well, I just say that I don't think it is a pertinent question.

"The Chairman. You have already said that.

"Miss Bryan. That is all I say.

"Mr. Landis. You don't say "Yes" or "No," then? You decline to answer?

55 "The Chairman. You have the right to decline if you want to.

"Miss Bryan. I would rather leave it at that.

"The Chairman. Then you will not answer it? Is that right?

"Miss Bryan. I have answered in saying I don't think it is a pertinent question.

"The Chairman. I understand that, but that doesn't answer the question.

"Miss Bryan. This gentleman says that it does.

"The Chairman. I don't care what the gentleman says. It is not an answer, and you know it is not an answer.

"Miss Bryan. I think it is an answer.

"The Chairman. And you want to leave it that way?

"Miss Bryan. Yes.

"The Chairman. Are you going to leave it that way?

"Miss Bryan. Yes.

"The Chairman. That is fair enough. That is an answer.

"Mr. Rankin. You decline to produce these books?

"Miss Bryan. After consulting with counsel I came to the conclusion that the subpena was not valid and therefore, although I am very glad to testify about any part of the relief activities of our organization, I cannot comply with your request for the production of
56 the books and records.

"The Chairman. And you haven't got them here, have you?

"Miss Bryan. I said, Mr. Wood, I could not comply with your request.

"The Chairman. I understand that, but you haven't got the books here available to this committee, have you?

"Miss Bryan. No.

"Mr. Rankin. Mr. Chairman, I would like to consult with the committee just a minute. Let the witness step into the next room.

"(The witness withdrew from the committee room.)"

Then there is a statement in the record which I understand is to be omitted, and following that—no, I won't read that either because it does not relate to this case, but the whole proceeding.

BY MR. MURRAY:

Q Were you before the committee during this questioning and answers I have just finished reading, Mr. Adamson? A Yes, sir.

MR. MURRAY: I have no further questions on direct examination.

THE COURT: Suppose you gentlemen come to the bench a minute.

(Thereupon counsel approached the Court's
57 bench, the witness retired from the witness stand and, out of the hearing of the jury, the following occurred:)

THE COURT: I don't know whether Mr. Rogge is going to ask any questions of this witness. Do you want to ask him? I don't want to call him back.

MR. MURRAY: I have no further questions if, as I understand it, we do not have to go into any additional proof of pertinency.

THE COURT: No, but I mean asking this witness from Pittsburgh.

MR. ROGGE: I am going to question him.

MR. MURRAY: As long as it is going in I will ask him on direct examination.

THE COURT: All right.

(Counsel returned to the trial table, the witness resumed the witness stand, and the following proceedings were had in open court:)

BY MR. MURRAY:

Q Mr. Adamson, do you recall how many members of the committee were present during the questioning of Miss Bryan? A Well, as I recall it, she was called towards the end of the day, and I do not think all the members of the committee were present. As I recall it, there were six of the nine present, but I would have to look at the transcript to refresh my recollection.
58 The Chairman was there, and Mr. Mundt was there, and Rankin, Peterson, but as to the others I would want to look at the transcript to refresh my recollection. As a matter of fact, they came and went all day during the hearing.

Q As far as the transcript you refer to, all that shows is the questions and answers, and as far as I know it does not show at any particular time the members there. Of course, in the asking of questions, anybody asking questions would have to be there to do it, but it does not give any list of members at different times? A No, my recollection is that there were six members of the committee present when the committee adjourned that afternoon, and I recall when she handed in her statement she had papers in her hand that some of the members accepted and read the statement after the committee adjourned.

MR. MURRAY: That is all. That is the end of the direct examination.

Cross Examination

BY MR. ROGGE:

Q Now, Mr. Adamson, she didn't hand you any particular statement on that day? A I believe there was a statement, a mimeographed statement given out by somebody, and I think Miss Bryan had papers in her hand from which she took some copies. Now, whether that was the statement, the mimeograph of that transcript, Mr. Rogge, I am not sure.

59 Q As a matter of fact, don't you know that statement was mailed down later? A I think we did get a statement from her by mail, and I think she asked that that statement be substituted or incorporated in the record. I believe at least the one in the record is the one that came by mail.

Q As a matter of fact, doesn't the transcript affirmatively so show? A Yes, I think this is the one that came by mail, and the one you are talking about is the one set out in here. I wouldn't swear to that.

Q On this particular day you had an additional 17 members in the committee? A Yes, there was quite a crowd.

Q And by the time Miss Bryan got on the stand it was quite crowded? A Yes, sir, I think that is right.

Q And your committee adjourned about 6:10? A Yes, I think that is about right.

Q So Miss Bryan must have gone on there only about 5 o'clock? A Well, between 4:30 and 5, or after 4 o'clock.

Q Wouldn't it be fair to say after 4:30? A Well, it was at least—

Q (Interposing) I am trying to get your opin-
60 ion. A Well, it was at least after 4.

Q Is it true that at that late hour there were still six members of the committee present? A Yes, there was a great deal of interest. They came and went from time to time, and we also had a quorum of the committee.

Q As a matter of fact, Congress was in session that day? A Yes, sir, that is true. And I believe the chairman spoke to the Speaker to have the meeting continue in the afternoon while the House was in session.

Q And the committee members went in and out? A Yes.

Q So that you do not know who was there at any particular time? A With the exception of the chairman I wouldn't attempt to say at any particular moment exactly which members of the committee were present.

Q Who was there when Miss Bryan was sworn some time after 4 o'clock in the afternoon? A Well, I have looked at the transcript but, I would say of course that the chairman was there, and the names of the gentlemen who appear in the transcript were certainly there.

Q In other words, do you want to refresh your recol-
lection by looking at this document, is that right? A
61 I have looked at it once already.

A As a matter of fact, you have looked at it today? A No.

Q This week? A No.

Q You looked at it last week? A I may have looked

at it last week in connection with another trial. Well, the chairman, Mr. Landis—

THE COURT: I don't think you need to read this record to reflect those who were there.

BY MR. ROGGE:

Q You said that there were six there. Do you recall any others who were there? A I don't know. I think Peterson was there, and I think Mr. Rankin came and went out a couple of times, and I am not sure whether Mr. Murdock stayed the whole time, or not.

Q As a matter of fact, don't you know he wasn't there when she was being questioned? A I don't recall him taking any part in her examination.

Q As a matter of fact, don't you know he was not there? A No, I wouldn't say he wasn't there at any time.

Q I am not talking about any time. I am talking about the time after 4 o'clock in the afternoon when Miss
62 Bryan was present. A No, I have no such recollection.

Q Wouldn't the same thing be true of Mr. Peterson? A No. My recollection is that Mr. Peterson came in and went out.

Q What time were they there? A I couldn't pick out any particular time on them.

Q The only thing you can tell us definitely are the four people who questioned her, and you can't say that they were there all the time, can you? A No, I can't say that each of them were there when her examination was concluded. I know there were about six when the committee adjourned, but whether the six included the members who interrogated Miss Bryan, except the chairman, I wouldn't care to say.

Q I don't get any definite idea of more than four being there except you say six, but haven't named them. A No; I think that there were six there right straight through.

Q But you haven't any names of those who were there? A No, I would have to refresh my recollection.

Q Now, on this same day you recall that there were a total of 17 other persons there, don't you? A Well, I don't know whether there were 10 or 17, Mr. Rogge, but there was quite a number, I recall.

Q And those other persons who were there were
63 the members of the executive board of the Joint Anti-Fascist Refugee Committee? A I believe they so testified.

Q All 17 of them? A Miss Bryan didn't say she was a member.

Q I am talking about the 17 in addition to her, and you can add them up if you want to. A I will take your word for it. If you say there were 17 I will adopt your figures.

Q All right. Do you know those other 17, talking about those in addition to Miss Bryan, were members of the executive board of the Joint Anti-Fascist Refugee Committee? A They so testified.

MR. ROGGE: That is all.

THE COURT: Any further questions?

MR. MURRAY: I have nothing further.

THE COURT: Is the witness excused, gentlemen?

MR. MURRAY: Yes, Your Honor, we have no further need for him.

MR. ROGGE: That is agreeable.

(Witness excused.)

MR. MURRAY: Your Honor, with the understanding that the matter as to pertinency is not in question under the stipulation stated, the Government will rest.

THE COURT: There is no question about the
64 pertinency matter?

MR. ROGGE: That is correct. That has been stipulated.

THE COURT: All right.

MR. ROGGE: I shall wish to make a motion.

THE COURT: Come to the bench.

(Thereupon counsel approached the Court's bench and, out of the hearing of the jury, the following occurred:)

MR. ROGGE: I would like to finish this in the morning.

THE COURT: Let me ask you this: Is Miss Bryan going to take the stand?

MR. ROGGE: I doubt it. I haven't asked her, but I don't think she will.

THE COURT: The reason I asked about her, I was thinking about the jury. I don't think there is any use holding this jury up tonight.

MR. ROGGE: As a matter of fact, if I have a chance I would like to argue this motion in the morning. I will be very brief.

THE COURT: Let us argue the motion and have that out of the way, and I will excuse the jury now.

(Counsel returned to the trial table and the following proceedings were had in open court:)

THE COURT: Ladies and gentlemen of the jury, the Court is going to recess at this point so far as you are concerned, and you will return tomorrow at 10
65 o'clock. During the adjournment the Court wants to admonish you that you are to talk to no one about this case, and you are not to permit anyone to talk to you about this case, and you are not to talk among yourselves as jurors at this time, and similarly you are to ignore, if anything appears in the newswapers or on the radio, anything about this case.

Is there any further admonition you gentlemen care to suggest?

MR. ROGGE: Nothing further, Your Honor.

THE COURT: There being nothing further, you are now excused to return to this courtroom tomorrow morning at 10 o'clock.

(Thereupon the jury retired from the courtroom after which the following occurred:)

MR. ROGGE: If Your Honor please, in arguing the motion for an acquittal, I want to urge again the various points which were urged upon a motion to dismiss which has previously been relied upon.

I want to urge next the points that arose during the course of the trial, one of them that the document which was served upon Miss Bryan was not a subpoena.

Next, that the testimony given before the House Committee on Un-American Activities was improperly admitted in violation of Section 634 of Title 28.

And I also want to urge upon Your Honor that the
66 defendant was given immunity as a result of what I contend was Your Honor's erroneous ruling requiring Miss Bryan to answer certain questions in the trial of the Fleischman case.

Now, I will say to Your Honor on that that I haven't had a chance to look up the law, but I do remember on one occasion when I was doing some grand jury investigation in the State of Louisiana, I found the District Attorney there had a waiver of immunity and I said, "Where is the immunity statute?" and I didn't find it, but I did find authorities to the effect that if a witness was asked to answer, and compelled under compulsion to answer, that gave, in effect, legal immunity.

Now, certainly Miss Bryan, when she was before you in the Fleischman case, would have continued to refuse to answer at her peril because it was within Your Honor's power, or at least the witness would have felt that, that you had it in your power to commit her for contempt, so she was under compulsion to answer that question after she had claimed her privilege against self incrimination.

I haven't looked up the law on that point, but I did look up sufficiently to satisfy myself that the fact that she had answered previous questions did not constitute a waiver. I am satisfied on that proposition, but now whether beyond that she gets a legal immunity, I am inclined to think she does but I haven't looked up the law on it.

The only additional thing I can think of I want to
67 urge on the motion for acquittal, and the reason I am not arguing it at length is because we have already argued it and the Court has decided that, I think erroneously, but at the present time I am bound by that decision.

The only thing I would wish to add to my motion, Judge, is if overnight we had an opportunity to look up the cases as to whether there has been a case cited on legal immunity I would like to cite them but, aside from that, that would complete my argument on my motion for acquittal.

THE COURT: I understand that you may have something else you want to urge, and I will not act on your motion tonight.

Now, let me ask you this in the interest of time, and not have the jury wait: Will you have any evidence?

MR. ROGGE: I will have to confer with my client. I don't think I will have any evidence, so we will come immediately to the question of considering the charge.

THE COURT: As to that, you have suggested the Barsky charge: you can make use of it.

MR. ROGGE: As a matter of fact it occurred to me when Your Honor asked me that, I was about to say to Your Honor whether you could take the suggestions we gave in the Fleischman case; they won't apply specifically because there was a group.

THE COURT: Well, out of that group I will ask
68 you to present those which you deem to be applicable to this case. Would you have that in the morning?

MR. MORGAN (deputy clerk of court): I have them.

THE COURT: Will you have them marked?

MR. ROGGE: I never ordered a copy.

THE COURT: Let me suggest this to you, so there won't be any question: You meet with Mr. Morgan and mark what they are so there will be no question.

Have you any question about that, Mr. Murray?

MR. MURRAY: No.

THE COURT: That will be your responsibility, Mr. Rogge, to see that there is nothing added to or deleted from them.

MR. ROGGE: That is agreeable.

THE COURT: That will be all then this afternoon, gentlemen.

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70 *Proceedings*

MR. ROGGE: May we approach the bench?

THE COURT: Yes.

(Thereupon counsel approached the Court's bench and the following proceedings were had out of the hearing of the jury:)

MR. ROGGE: I had another engagement last night so that we haven't completed our research on whether she got legal immunity as a result of Your Honor, as it is our contention we think erroneously, in overruling it, so that completes our argument. If we find any further matters to suggest we will present them.

THE COURT: Have you anything further?

MR. MURRAY: No, sir.

THE COURT: All right, then I will deny the motion.

MR. ROGGE: And the defense rests, and we renew the motion for an acquittal.

THE COURT: Very well, it will be denied.

MR. ROGGE: And here are the instructions.

THE COURT: Have you seen these?

MR. MURRAY: Yes, sir.

THE COURT: This was inadvertence, I assume, your number 8 relates to character witnesses. There has been none.

MR. ROGGE: Yes, Your Honor may strike that.

THE COURT: Do you want this 10? You have given it so I guess I am correct in assuming you want it.

71 Have you any objection to 10?

MR. MURRAY: I have no objection to it, but it is out of line with our plan to avoid any mention of the other—

THE COURT: That is the reason I marked it. If you want it— I thought the object was to stay away from it, but if you think the negative will be helpful to you, that is all right.

What about this question of quorum, Mr. Murray?

MR. MURRAY: Well, the Court instructed them in the Fleischman trial that there was a quorum.

THE COURT: Yes.

MR. MURRAY: I can't enlighten you very much on that. My own view is that it is a matter that cannot be collaterally attacked by the witness. It is a matter that should have been called to the attention of the committee at the time, and the certification here is presumed to be within the rules. If I had been sure about it I would have brought it out in the testimony, but I can't say that I am sure.

THE COURT: All right; I will say I will deny your prayers as you offer them except as I will make use of them in the general instructions which I will give.

MR. ROGGE: And then we usually approach the bench after Your Honor's charge?

THE COURT: Yes, except I am specifically interested in the one we talked about, namely, 10, unless I find
72 something else in here.

How much time do you want?

MR. MURRAY: I will take between 10 and 15 minutes altogether.

MR. ROGGE: Fifteen minutes is enough, Judge.

THE COURT: Very well.

* * * * *

84 *Court's Charge to the Jury*

THE COURT (Keech, J.): Members of the jury, the defendant here is on trial under an indictment

charged with violation of Title 2, Section 192 of the United States Code.

That part of that section as applicable to the case reads as follows:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before any committee of either House of Congress, wilfully makes default shall be deemed guilty of a misdemeanor."

It is now your duty to determine whether the defendant here is guilty or not guilty of that charge. It is my duty to instruct you as to the law applicable to this case, and that must govern you in your deliberations and in arriving at your conclusion. You are bound and obligated to follow the Court's instructions as to law, but you, the members of the jury, are the sole judges of the facts, and you must determine those facts for yourselves, solely on the basis of the relevant evidence adduced before you.

The Court is permitted to summarize and discuss the evidence in order to assist the jury in arriving at its conclusion; but, if your recollection of the evidence differs in any respect from the Court's recollection, then your recollection must prevail, because the final decision on the
85 facts is entirely within your province, while my instructions are binding on you only as to the law.

The fact that a defendant has been indicted and is charged with a crime is not in itself to be taken as an indication of guilt, and no inference is to be drawn against her from that fact, because an indictment is merely the machinery and procedure that the law provides for bringing the defendant before the court and placing her on trial. That is the only function of an indictment.

Every defendant in a criminal case is presumed to be innocent, and this presumption of innocence attaches to the defendant throughout the trial. The burden of proof is on the Government to prove the defendant guilty beyond

a reasonable doubt, and unless the Government sustains this burden and proves beyond a reasonable doubt that she committed the crime with which she is charged, you must find her not guilty.

But, you might ask, what is meant by the term "a reasonable doubt." It does not mean any doubt whatsoever. Proof beyond a reasonable doubt is proof to a moral certainty and not proof to an absolute or a mathematical certainty. By a reasonable doubt, as its name implies, is meant any doubt based on reason, not any whimsical or capricious conjecture. It is a doubt which is reasonable in view of all the evidence. Therefore if, after impartial comparison and consideration of all the evidence, you
86 can candidly say that you are not satisfied of the guilt of the defendant then you have a reasonable doubt. But, if after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your personal affairs, then you have no reasonable doubt.

If the facts in this case with regard to the defendant are as consistent with her innocence as with her guilt, you must find the defendant not guilty.

The mere fact that the defendant, Helen R. Bryan, was summoned by the House Committee on Un-American Activities to produce certain records before it creates no inference whatsoever that she was engaged in any subversive or un-American activities.

In determining whether the Government has established the charge against the defendant beyond a reasonable doubt, you will consider and weigh all the testimony of all the witnesses who have testified before you. You are the sole judges of the credibility of the witnesses as you are the sole judges of the facts. In determining whether to believe the testimony of any witness, and in weighing the testimony of any witness, you may consider his demeanor

on the stand; his manner in testifying; whether he impresses you as having an accurate memory and recol-
87 lection, and whether he impresses you as a truth telling individual.

As I have said to you, the indictment charges the defendant with contempt of Congress in wilfully and deliberately failing to produce records before the committee of the House of Representatives.

It is admitted that the defendant was summoned by an authorized committee of the House of Representatives, which was the Committee on Un-American Activities, which was authorized to conduct an investigation, authorized by House Resolution 5 of the Seventy-Ninth Congress, adopted January 3, 1945, which summons directed the defendant to appear and produce before the committee certain records of the Joint Anti-Fascist Refugee Committee, specifically all books, ledgers and papers relating to the receipt and disbursements of money by or on account of the Joint Anti-Fascist Refugee Committee, or any subsidiary or subcommittee thereof, together with all correspondence, memoranda or communications by any means whatsoever with persons in foreign countries for the period from January 1, 1945, to March 29, 1946.

It is further also admitted that the defendant appeared before the congressional committee on April 4, 1946, and did then and there refuse to produce the records called for in the subpoena and thereby wilfully made default.

There has been some evidence introduced by the Government with reference to the various allegations in the indictment.

88 The defense has not disputed that a paper purporting to be a subpoena was served upon the defendant, but has intimated that such paper was not in fact a proper subpoena issued by authority of a House of Congress.

The Court instructs you, as a matter of law, that the Committee on Un-American Activities of the House of

Representatives was a validly constituted committee of the Congress, and was at the time of the defendant's appearance; that such committee had jurisdiction over the matters under consideration; that the documents requested were pertinent thereto; that the committee had a reasonable basis for issuing the subpoena in question and that the subpoena was not unreasonable in requesting production of the various documents therein described.

The Court instructs you further, as a matter of law, that the general rule in criminal cases is that a mistake in law on the part of the accused does not constitute justification for her act, and that if she deliberately and intentionally commits the act it is a crime.

The Court instructs you, as a matter of law, that ignorance is no part of the transaction. In this particular case, however, you have a right to consider, in the light of all the evidence produced, under the circumstances which have been presented, whether the acts of the defendant here were deliberate and intentional.

I instruct you that the opening statement of counsel for the Government and the argument of counsel for the Government and the defense at the conclusion of the case, are not evidence.

I want to stress to you two points:

First: Your determination of the guilt or innocence of this defendant must be reached solely on the basis of the relative evidence adduced at this trial, without any feeling of emotion, bias or prejudice, without any anger on the one hand, and without any sympathy on the other.

Second: The nature of the activities of the defendant, or the organization with which she is connected, is not an issue in this case, and it is your duty entirely to disregard in your deliberations any speculation on that subject.

The issues which you are called upon to determine are the basic elements of the offense with which the defendant has been charged that have been and will be defined by the Court.

It is incumbent upon the Government to prove each and all of the essential elements of the crime charged beyond a reasonable doubt. Briefly, the elements of this offense are as follows:

(1) That the Chairman of the Committee on Un-American Activities of the House of Representatives caused to be prepared a subpoena directed to the defendant to
90 appear before the committee and produce the records described therein.

(2) That such subpoena was signed by the chairman of said committee, and was served by a person designated by said chairman by placing the same in the possession of the defendant.

(3) That the defendant had custody or dominion and control over such records.

(4) That the defendant wilfully made default, that is, wilfully failed to produce the records called for by the subpoena.

The Court instructs you as a matter of law that one, or a combination of others, could have also produced the subpoenaed records is not a bar to the prosecution of the defendant if you find that the Government has proved beyond a reasonable doubt all of the elements enumerated.

Several times during the charge I have used the term "wilful" or "wilfully." "Wilful,' as used in Title 2, Section 192 of the United States Code, under which the defendant is indicted, means "deliberate and intentional", and not inadvertent or accidental. Thus, the motive of the defendant in failing to comply with the subpoena and her reason for such failure are not material, so long as you find that she did so intentionally and deliberately.

The charge in this indictment, although sometimes referred to as "contempt," does not mean a personal animosity or dislike toward the congressional com-
91 mittee or any of its members. The charge consists of the elements as I have defined them to you.

If you believe that the Government has proved, beyond a reasonable doubt, each and all of the elements, as outlined and explained, then you must find the defendant guilty. If, on the other hand, you believe that the Government has not proved, beyond a reasonable doubt, each and all of the elements, then you must find the defendant not guilty.

Gentlemen, have you anything further?

(Thereupon counsel approached the Court's bench and, out of the hearing of the jury, the following occurred:)

MR. ROGGE: Your Honor, the first point we want to make is the charge with reference to quorum.

THE COURT: I hold it as a mater of law.

MR. ROGGE: That is our objection to Your Honor's charge, that you did not give our requested charge on quorum.

THE COURT: Yes, sir.

MR. WOLF: We have an objection to the Court's charge with regard to finding that the Committee on Un-American Activities was a validly constituted committee of Congress; that the committee had jurisdiction over the matters under consideration that the documents requested were pertinent to the inquiry; that the committee had reasonable basis for issuing the subpoena, and that the subpoena was not unreasonable in requesting production of the various documents described in it, and request that in place of this finding the appropriate finding is in our earlier submission to the Court, and request our instruction be substituted for it.

92

We object further to the holding, as a matter of law, that the paper served on the defendant constituted an adequate subpoena.

THE COURT: I am afraid I didn't do that, but I will do it.

MR. WOLF: And the question of quorum, too, I am not sure of any instruction given to the jury.

MR. ROGGE: He has charged, as a matter of law, that it was a properly constituted committee.

MR. WOLF: We object to the charge as to what constitutes wilfulness and wilful default, and not inadvertent and accidental;

To that part of the charge involving a definition of deliberate and intentional, and ruling out consideration of the motive of the defendant.

Again, we are required, I think, to state in detail the reason for each objection unless they are waived.

MR. MURRAY: They have been fully argued before.

MR. ROGGE: And if Your Honor charged that the paper served on Miss Bryan was a valid and proper subpoena, it is understood we are objecting to that part of the charge without the necessity of coming to the bench again?

93 THE COURT: Yes.

MR. MURRAY: It may be stated that the failure of the Court to charge on the element of failure of the defendant to take the stand—

THE COURT (interposing): I mentioned it to Mr. Rogge yesterday and he asked me specifically not to do it.

(Thereupon counsel returned to the trial table and, in the hearing of the jury, the following occurred:)

THE COURT: Ladies and gentlemen, the Court neglected to call your attention to one thing, that the document which was served on Miss Bryan to appear and bring these papers before the committee was a legal document; in other words, was a valid subpoena.

Now, ladies and gentlemen, it becomes your duty to retire to the jury room to carefully and deliberately consider this case in the light of the testimony adduced under the instructions of law which I have given you.

After reaching the jury room, you will select a foreman from among your group, who will represent you when you return with your verdict.

This is a criminal case, of course, and therefore your verdict will have to be unanimous.

There being nothing further, you may retire and consider your verdict.

(Thereupon, at 11:20 o'clock a. m., the jury re-
94 tired to consider of its verdict, and the Court proceeded to the transaction of other business.)

(Thereupon, at 11:40 o'clock a. m., the jury notified the Deputy Marshal, and the Deputy Marshal informed the Court that the jury was ready with its verdict.)

(Thereupon, the Court being upon the bench, counsel for the Government, counsel for the defendant, and the defendant being present, the jury was returned into the courtroom and the following occurred:)

THE DEPUTY CLERK OF COURT: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN OF THE JURY: They have.

THE DEPUTY CLERK OF THE COURT: What say you as to the defendant Helen R. Bryan?

THE FOREMAN OF THE JURY: Guilty.

THE DEPUTY CLERK OF COURT: Members of the jury, your foreman says that you find the defendant Helen R. Bryan guilty, and that is your verdict, so say you each and all?

(The members of the jury indicated in the affirmative.)

* * * *

97 Washington, D. C.,
Thursday, April 8, 1948.

The above-entitled matter came on for hearing on motion for new trial or, in the alternative, a verdict of acquittal, at 12 o'clock noon, Thursday, April 8, 1948, in The District Court of the United States for the District of Columbia, in the Court House in the City of Washington, District of Columbia.

BEFORE:

HONORABLE RICHMOND B. KEECH, Associate Justice of The District Court of the United States for the District of Columbia.

APPEARANCES:

CHARLES B. MURRAY, ESQUIRE, Assistant United States Attorney, on behalf of the United States;

O. JOHN ROGGE, ESQUIRE; BENEDICT WOLF, ESQUIRE, and ROBERT H. GOLDMAN, ESQUIRE, on behalf of the Defendant.

98 *Proceedings*

MR. ROGGE: I wonder, since we are all here, should I go ahead and argue the same matter in the Bryan case?

THE COURT: Have you any objection?

MR. MURRAY: No. I would prefer it, as a matter of fact.

MR. ROGGE: In the Bryan case, making an oral and renewed motion for an acquittal, and making a motion for a new trial, I urge the points that have previously been urged, and there are several of them that I wish to stress.

1. I think that Your Honor and I referred to certain authorities, and I have since had a chance to look at Wigmore. I think Your Honor was in error in compelling Miss Bryan to answer after her claim of privilege. I do not think she waived that by answering one question, which really was under what may have been confusing circumstances back in June, and if Your Honor was erroneous in compelling her to testify, as I think Your Honor was, then, in my opinion, she got legal immunity, and this trial should not have taken place.

The second point that I wish to urge is one of the points that I have argued before, and on which I am going to submit an additional memorandum, and that is on the point of the quorum. I think, as I have stated with reference to the motion in the Fleischman case, the burden is on the Government to show beyond a reasonable doubt

99 that a quorum was actually, physically present at the

time the witness was sworn, and when there occurred the alleged refusal to produce the requested books and records; that if there is any presumption of regularity, and I deny that there is in this case, that a quorum existed, that is an abstract presumption under the authorities, and the presumption of innocence prevails, and that presumption of innocence, as Your Honor knows, is a very strong presumption. There is a presumption against suicide, but if it runs into the presumption of innocence, that prevails. There is a presumption of chastity in a woman, but if it runs into conflict with the presumption of innocence, the presumption of innocence prevails.

I have run into several cases. I think one was that of a woman being taken to a disorderly house, and the requirement was one of chastity, and the court said "Nothing doing, the presumption of innocence prevails."

You may say if there was a quorum at one time it is presumed to continue, but there are cases which will be in the memorandum we will submit to Your Honor to the contrary; so here, under all the authorities I am citing, not only must the Government show beyond a reasonable doubt that there was a quorum present at the time that Helen Bryan was sworn, and when she allegedly refused to produce the books and records, but the Government in making that proof cannot rely on that kind of presumption because any presumption they would bring
100 forward I do not think there is any doubt would run afoul of the presumption of innocence, and the presumption of innocence would prevail.

Next, the third thing I wanted to stress here, and I suppose this is something that would more appropriately await sentence, but since I am on my feet I will mention it anyway: I think the Government in this situation should be consistent. The Government made a great contention in the Barsky case that Helen Bryan was an employee, as a matter of fact, Mr. Murray referred to her

as a scapegoat, actually in court referred to her as that, so I say to Your Honor that the Government has to be consistent.

What you have here is a paid employee whose job depended on not producing the books and records, and so she did what the board suggested, she consulted with counsel and did not produce them. Since the Court decided the Barsky case on the theory that the top authority was the executive board, I say Helen Bryan should have the benefit of that.

So it is in the same vein in this particular proceeding that the defendant felt under all the circumstances on that question, had that same feeling that her job was at stake led her to feel that she must request a jury trial, but Your Honor will admit that, although we did not waive the jury trial, we made the trial of this case, in accordance with her wish, as easy and simple as any trial like this could be.

101 With her consent, authorization and approval, Mr. Murray will have to admit we stipulated all the facts in this case. Though it took a few hours to try it, we could have saved a couple of hours, maybe, if we had waived a jury, but we reached practically that effect in this case.

I would also want to call to Your Honor's attention one further thing, and that is that Helen Bryan has been a Government witness on at least three occasions that I know about in this general situation. She was a witness in the Barsky case. She was a witness, as I recall, in another case in the District, at least I remember her coming down, and I think she testified, and Mr. Wolf calls my attention she was also a witness before the grand jury. She has testified for the Government on at least four separate occasions.

Now, on one of those occasions, the last one, it is true she claimed her privilege. She had a trial which immediately followed, and which took place, and so after Your Honor overruled her claim of privilege she went ahead

and testified, so she has been a witness for the Government no less than four times.

Now, I wonder, having gone this far, whether I should describe any of the circumstances which will come up in a probation report with reference to her. Your Honor, I daresay, will not find any person in this country who will come up with a more outstanding report from the
102 Probation Depart. She comes from a long line of Presbyterian parentage; she got her early training in an exclusive girl's school, was graduated from Wesleyan with a B. M. degree. Her first job was in relief work. Her heart has always been in that work. Her first job was in Detroit where she had charge of the girls' activities, and as a result of that they offered her a job at a theological school in New York. We find with that training, after working three years she went to Pittsburgh where she was in charge of a girls' department in—

THE COURT (interposing): I don't want to cut you off, Mr. Rogge, but if you are going to give it to the Probation Officer I assure you I will read it.

MR. ROGGE: And from that point on, I have made my argument.

THE COURT: I assure you I will read it.

MR. ROGGE: I am sure Your Honor will. I think the only thing I had in mind was whether Your Honor would want to follow that which I know is the normal procedure in the Probation Department; Mrs. Fleischman is coming down on Monday, and perhaps that would be good procedure.

THE COURT: I think it would.

MR. ROGGE: Then would it be agreeable to ask for Friday, the 23rd as the date for sentence in both cases?

THE COURT: I know of no reason why it should not be done.

103 Is there anything you want to say?

MR. MURRAY: I think perhaps I should defend the Government in consistency.

THE COURT: I don't think you need do that because what I think he is driving at is the matter of competency.

MR. ROGGE: Yes.

MR. MURRAY: I have nothing to say as far as the sentence is concerned, that being a function of the Court.

THE COURT: Then I will say after you get the memorandum on quorum, let me have the benefit of what you may find.

MR. MURRAY: I will do that.

THE COURT: And I will ask you to do that having in mind the date fixed for the 23rd, and I assume you will not ask me to wait for this report from the Probation Department. That will go forward right away?

MR. ROGGE: That will go forward.

(The instance hearing was thereupon concluded.)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Monday, February 7, 1949

* * * * *

Before HONORABLE HENRY W. EDGERTON, E. BARRETT PRETTYMAN and JAMES M. PROCTOR, Circuit Judges:

* * * * *

No. 9851, January Term, 1949

HELEN R. BRYAN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 9852, January Term, 1949

ERNESTINA G. FLEISCHMAN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

On motion of Mr. O. John Rogge, attorney for appellants, Mr. Benedict Wolf of the Bar of the Court of Appeals of New York was permitted to argue for appellants pro hac vice by special leave of Court.

Argument commenced by Mr. Benedict Wolf for Appellants, continued by Messrs. O. John Rogge for appellants and Charles B. Murray, attorney for appellee, and concluded by Mr. O. John Rogge.

* * * * *

United States Court of Appeals for the District of Columbia Circuit—Filed Apr. 8, 1949. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit

No. 9851

HELEN R. BRYAN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Columbia (now the United States District Court for the District of Columbia)

Argued February 7, 1949. Decided April 8, 1949.

Mr. Benedict Wolf of the bar of the State of New York, *pro hac vice*, by special leave of Court, and *Mr. O. John Rogge* for appellant.

Mr. Charles B. Murray, Assistant United States Attorney, with whom *Mr. George Morris Fay*, United States Attorney, was on the brief, for appellee. *Mr. John D. Lane*, Assistant United States Attorney, also entered an appearance for appellee.

Before EDGERTON, PRETTYMAN, and PROCTOR, JJ.

PER CURIAM: Like the appellant in *Fleischman* v. *United States*, decided today, the present appellant has been convicted of willfully making default before the Committee on Un-American Activities of the House of Representatives after being summoned to produce before it the records of the Joint Anti-Fascist Refugee Committee. Unlike Fleischman, the present appellant was custodian of the records and refused to produce them before some members of the Congressional Committee on April 4, 1946. The court instructed the jury in effect that a quorum of the Congressional Committee was present. For reasons set forth in our opinion in the *Fleischman* case, we think this was a material question of fact which should have been submitted to the jury.

Reversed.

PRETTYMAN, J., *dissenting*: I think that this judgment should be affirmed. The reasons for my dissent are stated in the dissenting opinion in No. 9852, *Fleischman* v. *United States*.

United States Court of Appeals for the District of Columbia Circuit—Filed Apr. 8, 1949. (S.) Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit
April Term, 1949

No. 9851

HELEN R. BRYAN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Columbia (now United States District Court for the District of Columbia)

Before: EDGERTON, PRETTYMAN and PROCTOR, JJ.

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, now United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to award a new trial.

Per curiam.

Dated April 8, 1949.

Dissenting opinion by Circuit Judge Prettyman.

United States Court of Appeals for the District of Columbia Circuit—Filed May 24, 1949. Joseph W. Stewart, Clerk.

In the United States Court of Appeals for the District of Columbia Circuit

No. 9851

HELEN R. BRYAN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Designation of Record

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for a writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint Appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Appellee.

May 24, 1949.

Certificate of Service

I hereby certify that I have this day served a copy of the Designation of Record on O. John Rogge, Esquire, 401 Broadway, New York, N. Y., and on Benedict Wolf, Esquire, 160 Broadway, New York, N. Y., by mailing copies to them at their business addresses.

PHILIP B. PERLMAN,
Solicitor General.

Dated at Washington, D. C., this 24th day of May, 1949.

United States Court of Appeals for the District of Columbia Circuit

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, formerly United States Court of Appeals for the District of Columbia, hereby certify that the

foregoing pages numbered 1 to 74, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties, and the proceedings of the said Court of Appeals as designated by counsel in the case of: Helen R. Bryan, Appellant, v. United States of America, Appellee, No. 9851, April Term, 1949, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this twenty-fifth day of May, A. D. 1949.

[SEAL.] (S.) JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia Circuit.

In the Supreme Court of the United States, October Term, 1948

No.

UNITED STATES, PETITIONER

v.

HELEN R. BRYAN, RESPONDENT

Stipulation

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that:

1. For the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record shall consist of the following:

(a) Joint Appendix to Appellant's Brief.

(b) The proceedings had before the United States Court of Appeals for the District of Columbia Circuit as set forth in the Designation of Record filed by the Petitioner.

2. Petitioner will cause the Clerk of the United States Court of Appeals for the District of Columbia Circuit to file with the Clerk of the United States Supreme Court the entire transcript of record in the United States Court of Appeals for the District of Columbia Circuit, and any of the parties may refer in their briefs and argu-

ments to said transcript of record, including any part which has not been printed.

May 24, 1949.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.
O. JOHN ROGGE,
Per: MURRAY A. GORDON,
BENEDICT WOLF,
Counsel for Respondent.
Per: MURRAY A. GORDON,

☆ U. S. GOVERNMENT PRINTING OFFICE 1949

Supreme Court of the United States

Order allowing certiorari

Filed October 17, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.